

REMARKS

Reconsideration of this application, as amended, is respectfully requested.

In accordance with Applicants' second election of claims in the response filed on January 28, 2008, claims 2, 5, 7, 9, and 11-14 have been additionally withdrawn herein. Claims 15-31 were previously withdrawn in response to an earlier restriction requirement. Claim 3 was previously cancelled. Claims 1, 6, and 10 have been additionally amended herein to clarify the claims. No new matter has been entered. Accordingly, claims 1, 4, 6, 8, 10, and 32 are pending.

Applicant reserves the right under 35 U.S.C. 121 to file one or more continuing or divisional applications directed to the non-elected subject matter in this application.

In the Office Action, the Examiner rejects claim 10 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner argues that the recitation in the claim "the returning direction of the fixing frame" lacks antecedent basis and is unclear. Furthermore, the Examiner finds unclear the passage "positioning the movable frame in advancing and returning directions of the optical path by advancing or returning the movable frame to a guide portion in the direction of the optical path." The Examiner also objects to the terms "advancing" and "returning" since the Examiner alleges that these terms can indicate the same action. Applicants have amended claim 10 to clarify the claim and address the Examiner's concerns. Support for the above amendment can be found on, for example, page 11, lines 11-18 of the instant application as filed. Accordingly, Applicants respectfully request that the rejection of claim 10 under 35 U.S.C. § 112, second paragraph, be withdrawn.

The Examiner also rejects claims 1, 4, and 8 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0020810 to Takizawa et al (hereinafter "Takizawa"). The Examiner considers Takizawa to teach all of the features shown in claim 1. It is worth noting that the Examiner previously cited Takizawa in the previous (first) Office Action, dated July 16, 2007, for the same reasons. In Applicants' response to the first Office Action (dated October 12, 2007), Applicants presented arguments showing that the Examiner's rejection was improperly based on the apparatus disclosed in Takizawa, and not based on any disclosed method of assembly. In this regard, Applicants specifically pointed out that Takizawa nowhere discloses the claimed step of forming an image of the image pick-up unit in order that a reference position of said image can be superimposed on a reference position of the fixing frame. However, the Examiner appears unconvinced by the foregoing arguments. Specifically, the Examiner considers the recitation of "a reference position" for both the fixing frame and image to include all possibilities for assembly of the components, such that claim 1 can allegedly be interpreted to be within the scope of Takizawa.

Claim 1 has been amended for the purpose of clarification to specify that the center position of the image area of the image pick-up unit is positioned to coincide with the center position of the image of the fixing frame. The present application repeatedly discloses aligning a center position of an image area of the image pick-up unit with a center position of an image of the fixing frame. See, for example, page 15, last paragraph; page 16, next to the last paragraph; and page 24, lines 5-14 of the instant filed application for support. Also, page 23, lines 3-7 of the instant filed application discloses that reference positions on the image pick-up device are used for establishing the center positions. In addition, as shown in the

disclosure on page 16, next to the last paragraph, the center of the image area "is fixed to be on the optical axis O of the objective lens system..." and also "positioned to be on the central axis of the cylindrical casing of the main body." The above features provide the final product with several advantages, such as those discussed on, for example, page 16, last paragraph, to page 18, line 2 of the instant filed application.

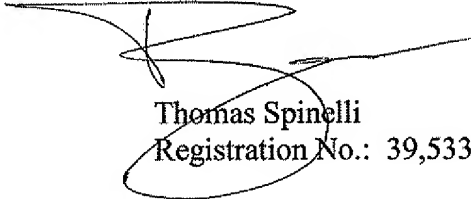
Takizawa nowhere remotely teaches the combination of assembly steps described above in claim 1. Since it has been decided that "anticipation requires the presence in a single prior art reference, disclosure of each and every element of the claimed invention, arranged as in the claim,"¹ independent claim 1 is patentably distinguished over Takizawa, and thus, cannot be anticipated by Takizawa. Since the remainder of the pending claims depend from claim 1, these claims also cannot be anticipated by Takizawa. Accordingly, Applicants respectfully request withdrawal of the rejection of the indicated claims under 35 U.S.C. § 102(e) citing Takizawa.

The Examiner also rejects claims 1, 4, 6, 8, and 32 under 35 U.S.C. § 103(a) as being obvious in view of U.S. Patent No. 7,022,066 to Yokoi et al. (hereinafter "Yokoi"). Yokoi discloses some aspects of the assembling process for a capsule endoscope. However, it is clearly evident that Yokoi does not teach or suggest the combination of steps shown in amended claim 1. For example, Yokoi does not anywhere teach or suggest aligning a center position of an image area of the image pick-up unit with a center position of an image of the fixing frame. Therefore, the pending claims cannot be obvious over Yokoi. Accordingly, Applicants respectfully request withdrawal of the rejection of the indicated claims under 35 U.S.C. § 103(a) citing Yokoi.

¹ Lindeman Maschinenfabrik GMBH v. American Hoist and Derrick Company, 730 F.2d 1452, 1458; 221 U.S.P.Q. 481, 485 (Fed. Cir., 1984).

In view of the above, it is respectfully submitted that the claims are patentable and that this application is in condition for allowance. If the Examiner believes that a telephone conference with Applicants' agents would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,



Thomas Spinelli
Registration No.: 39,533

SCULLY, SCOTT, MURPHY & PRESSER, P.C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530
(516) 742-4343
TS/EG/ech